

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Davidson	
Serial No.:	10/084,444	Art Unit: 1761
	Attorney Docket No.: 12502/8	
Filed:	February 28, 2002	
For:	PASTEURIZED EGGS	Examiner: Weier

Commissioner for Patents
Washington, DC 20231

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on July 7, 2003.

Signature: Joseph A. Coppola
Joseph A. Coppola Reg. No. 38,413

PETITION UNDER 37 C.F.R. §1.47(b)

Sir:

Pasteurized Eggs Corporation (hereinafter "Petitioner") hereby requests that Petitioner be permitted to direct prosecution of U.S. Patent Application Serial No. 10/084,444 (hereinafter "the Application") for the purposes of paying the issue fee due July 7, 2003 and filing a continuation application. Such permission is being requested because the inventor, L. John Davidson, has refused to co-operate with Petitioner in further prosecution of the Application despite a possible obligation to assign the Application to Petitioner.

As explained below, all of the requirements of 37 C.F.R. §1.47(b) and related sections of the M.P.E.P. are met by this Petition. 37 C.F.R. §1.47(b) reads as follows:

Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

THE INVENTOR HAS REFUSED TO CO-OPERATE IN FURTHER PROSECUTION OF THE APPLICATION

The inventor, through a letter dated June 13, 2003, from the inventor's counsel, Mr. Jamie Hage, to the undersigned Petitioner's attorney (Exhibit A), informed Petitioner that he will no longer co-operate in the prosecution of the Application.

As required by M.P.E.P. §409.03(d), the Petitioner states that, in the letter, the inventor gives his belief that he is the sole owner of the Application and that the Petitioner has no rights in the Application as his reason for refusing to co-operate.

THE PETITIONER HAS SUFFICIENT PROPRIETARY INTEREST

Petitioner has sufficient proprietary interest, as that term is used in 37 C.F.R. §1.47(b), to justify granting the relief requested. As evidence thereof, submitted herewith are copies of two documents signed by the inventor, L. John Davidson, that pertain to the inventor's obligation to assign certain inventions to Petitioner.

The first document (Exhibit B) is an employment contract dated January 22, 2001 between the inventor and Petitioner. The portion of Exhibit B governing the inventor's obligations to assign patent rights to Petitioner is found at item 6, second paragraph, spanning pages 3 and 4. The second document is entitled "Global Settlement Memorandum," (Exhibit C). The portion of Exhibit C governing the inventor's obligations to assign patent rights to Petitioner is found at page 2, items 1.b-d.

Both Exhibit B and Exhibit C create a category of inventions which the inventor has an obligation to assign to Petitioner. Exhibit A demonstrates that there is a dispute between the inventor and Petitioner over whether Exhibit B or Exhibit C govern the relationship between the inventor and Petitioner with respect to patent rights. This dispute, in its current intensity, is recent. As evidence of this, Exhibit D is a copy of an e-mail from the inventor to the undersigned, dated April 28, 2003, which shows that as recently as that date the inventor was co-operating with Petitioner on patent matters. The e-mail concerns payment of fees and selection of countries to be designated in connection with a European patent application owned by Petitioner. The inventor of the Application is also the inventor in that

European patent application. Dr. Bart van Wezenbeek is a European patent attorney who is prosecuting that European patent application.

Due to the recent nature of the dispute, combined with the lack of co-operation from the inventor, Petitioner has not had adequate time to carry out a full investigation of whether the inventions being claimed in the Application fall into the category of inventions that the inventor is obligated to assign to Petitioner under Exhibits B and C. Given the possibility that the inventor may be obligated to assign the Application to Petitioner, as well as the existence of imminent, non-extendible deadlines for the Application (see the section of this Petition immediately below), the Petitioner has "sufficient proprietary interest" (as that term is used in 37 C.F.R. §1.47(b)) in the Application to justify the action requested in this Petition.

Furthermore, the Application when filed claimed priority from U.S. Patent Application Serial No. 09/613,832, filed July 7, 2000 and U.S. Patent Application Serial No. 08/962,766, filed August 25, 1995. In claiming priority from these two applications, the inventor signed a declaration stating that at least some subject matter in the Application dated from the filing dates of these two applications, a period earlier than January 1, 2001. Exhibit E is a copy of the declaration submitted by the inventor in connection with the filing of the Application. While Petitioner believes that the inventor is under an obligation to assign all inventions made during his employment by Petitioner to Petitioner, irrespective of when those inventions were conceived, developed, or reduced to practice, there can be no dispute that Exhibits B and C require that inventions conceived, developed, or reduced to practice earlier than January 1, 2001 are owned by Petitioner. Therefore, it is clear that the Petitioner owns at least some subject matter disclosed in the Application since the inventor has sworn that at least some subject matter in the Application predates January 1, 2001. Petitioner therefore has a significant interest in seeing that the issue fee is paid and a continuation application is filed for the Application. This is another reason why Petitioner has "sufficient proprietary interest" in the Application to justify the action requested in this Petition.

A still further reason why Petitioner has "sufficient proprietary interest" in the Application to justify the action requested in this Petition is that the Application was originally filed with Myron A. Wagner, an employee of Petitioner, as a co-inventor. Mr. Wagner assigned his interest in the Application to the Petitioner. This assignment is recorded in the

assignment records of the United States Patent and Trademark Office at reel 012934, frame 0796. See Exhibit F, which contains a copy of the "Notice of Recordation of Assignment Document" issued by the United States Patent and Trademark Office in connection with Mr. Wagner's assignment and a copy of the assignment itself.

THE ACTION REQUESTED IN THIS PETITION IS NECESSARY TO PRESERVE THE RIGHTS OF THE PARTIES OR TO PREVENT IRREPARABLE DAMAGE

The issue fee for the Application is due July 7, 2003. Exhibit G is a copy of the Notice of Allowance and Issue Fee Due for the Application. The deadline for filing continuing applications will be the date of issue for this application. Therefore, the relief requested is necessary to prevent the Application from becoming abandoned and to allow for the filing of continuing applications.

THE FEE SET FORTH IN 37 C.F.R. §1.17(h))

The Petitioner requests that the fee set forth in 37 C.F.R. §1.17(h) be charged to Kenyon & Kenyon's Deposit Account No. 11-0600. Should any other fees be due in connection with this Petition, please also charge such fees to Kenyon & Kenyon's Deposit Account No. 11-0600.


THE LAST KNOWN ADDRESS OF THE INVENTOR

The last known address of the inventor, L. John Davidson, is:

36A Salem Road
Atkinson, NH 03811

L. John Davidson is currently the sole inventor of the claims of the Application. Thus, the requirement stated at M.P.E.P. §409.03(b) that 37 C.F.R. §1.47(a) not be available in order for Petitioner to proceed under 37 C.F.R. §1.47(b) is satisfied.

Respectfully submitted,



Joseph A. Coppola
Reg. No. 38,413

Attorney for Petitioner
KENYON & KENYON
One Broadway
New York, NY 10004
(212) 425-7200 (telephone)
(212) 425-5288 (facsimile)

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